

CLEAN WATER ACTION

**Testimony presented by Cyndi Roper
Great Lakes Policy Director, Clean Water Action**

**House of Representatives
Natural Resources, Great Lakes, Land Use and Environment Committee**

January 25, 2006

Thank you for the opportunity to testify today. The legislation you are considering is an historic attempt to conserve, guard and defend the precious waters of the Great Lakes, a cause that all of us in this room share.

Clean Water Action is a national citizens' organization working for clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. We have more than 170,000 Michigan members in all 110 House Districts served by four offices located in Macomb Co., Grand Rapids, Lansing and Ann Arbor. Over the past year, more than 35,000 of these members have written letters to their state senators or state representatives pushing for the three specific provisions Clean Water Action and its Great Lakes, Great Michigan partners will be discussing this afternoon. To date, their request has not been fulfilled. In the days ahead, we strongly urge you to make the requested changes to these bills, which will allow us to report to your constituents that their voices were finally heard.

Clean Water Action is a member of the Great Lakes, Great Michigan campaign, and we are solidly behind the campaign's three amendments: the diversion protection amendment; the resource protection amendment and the water management practices amendment. We came very close to winning these three amendments in the Senate with several Republicans crossing over to support our position. Unfortunately, the vote was primarily along party lines but securing public ownership and control of Michigan's water

should not be a partisan issue. Ensuring that private property owners have strong protections against impacts to water-dependent resources even if there are no fish living in those natural areas should not be a partisan issue. And asking each user group to agree upon generally accepted conservation practices then requiring large users within the group to *self-certify* they are adhering to these practices should not be a partisan issue.

Although Senate Bill 850 is an improvement over current law in regulating water withdrawals, it does not assure public oversight of water diversions. The only law that does that today is a federal law, Section 1109 of the Water Resources Development Act of 1986, as amended in 2000. Known as WRDA, this law gives the governors of all eight Great Lakes states the right to disapprove or veto any proposed new or increased diversion of Great Lakes waters.

Unfortunately, as you probably know, the Nestle Corporation is challenging the constitutionality of this federal law in court. If the company prevails, and if the House doesn't act by approving our amendment requiring legislative approval for diversions, foreign investors, corporations and others will claim they can buy and sell Michigan water *without any public oversight*. This threatens the future of the Great Lakes.

Let me remind you that the entire Great Lakes water issue came to a head beginning in 1998, when the proposed sale of 156 million gallons of Lake Superior water by an Ontario company to caused a public outcry. Large-scale water bottlers are now withdrawing more than that amount from Michigan for sale today, and although the quality of their source water is regulated, there is no public oversight or control over where they ship that water. We are simply urging you, as representatives of the public interest, to exercise your authority to make the decision as to when it is in the public interest to allow water to be shipped in large quantities out of Michigan. This by nature must be a public, not a private determination.

Unfortunately, Michigan has no law that gives the public an opportunity to comment on and prevent unwise sales and exports of Michigan water. Under our proposal, legislative authorization would be required for projects designed to transfer water outside the Great Lakes basin. The proposal would

give the Legislature the duty to determine that such projects were consistent with the public interest, wouldn't impair the environment or public health, and that they would result in an overall improvement to the waters of the state.

Our proposal would protect existing water users and the jobs they provide, while preventing the uncontrolled shipment of Michigan's water out of state for job creation elsewhere.

Let me make clear that there **is** an obvious legal distinction between water that leaves Michigan in bottles, trucks, tankers or pipelines, and water used to grow potatoes or make cars. The water itself belongs to the public. Centuries of special legal precedent confirm that. Use of water to make products or grow commodities is a traditionally protected right, and does not confer ownership of water itself on companies, farmers or others. On the other hand, selling water as a product implies ownership – and only the public can sign off on that.

Clean Water Action encourages you to preserve public ownership and control of the waters of Michigan by requiring legislative approval before any diversions of water. The Great Lakes, Great Michigan campaign's amendment does not ban diversions of Michigan's water. Instead it puts in place the rules and standards governing when such diversions could occur. It makes absolutely no sense for the legislature to stand aside and let international corporations and foreign governments define for us how our waters will be used. We must do everything in our power to assert if, when, and how Michigan's waters will be diverted. We need to establish a first line of defense. If we sit idly and wait for others to decide, we will lose ownership and control. Why would you, our elected state lawmakers, choose to wait?

Looming worldwide water scarcity, lack of water supplies in the Sunbelt states, and the growth of the bottled water industry mean that foreign investors and giant corporations see an opportunity for huge profit in capturing and selling water far from Michigan. We urge you to take the simple but important step of assuring that the public, through legislative oversight, will make the final decision on whether this is in the public interest.

Great Lakes, Great Michigan

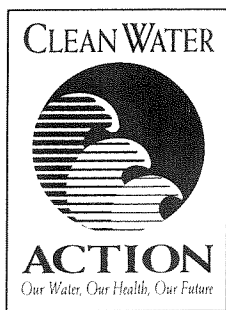
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Clean Water Action

sustaining news

VOL. 19, NO. 2 MICHIGAN, WINTER 2005-2006

Bi-partisan water bills deserve our support

by Cyndi Roper

When the Michigan legislature reconvenes after the New Year, lawmakers will have to choose between two approaches to addressing Michigan's uncontrolled water pumping. Either they can support the very weak approach backed by the Republican leadership in the Michigan Senate that would only slightly improve Michigan's water protections, or they can support a Clean Water Action-backed bi-partisan package of bills introduced in the Michigan House of Representatives.

The House bi-partisan bills grew out of Clean Water Action's efforts to unite dozens of environmental, religious, business, conservation, citizen and farming organizations behind the Great Lakes, Great Michigan campaign platform.

Critical to the success of this campaign thus far is the work

This view of Lake Superior shows the vastness of the Great Lakes. Clean Water Action is working on passing laws to ensure our water remains a vital piece of Michigan's quality of life.



spearheaded by Clean Water Action to bring along a dozen Republican lawmakers in support of the Great Lakes, Great Michigan platform. And leading that charge alongside Clean Water Action is Macomb County Republican Jack Brandenburg.

Just two years ago, few would have predicted that Clean Water Action could count on Representative Brandenburg for such a critical effort given that we had endorsed his opponents in two prior elections. However, Brandenburg earned both our endorsement in 2004 and our 2005 Special Hero of the Great Lakes award.

So why is the Legislature poised to act now? First, Governor Granholm made protection of Michigan's waters her top environmental priority, and she has continued pushing the Legislature to act. And second, Michigan citizens – including more than 33,000 CWA members who wrote their lawmaker on this issue – are demanding action to end Michigan's "no rules, free for all."

Now, with less than a year before the entire Legislature faces re-election, lawmakers realize voters will be watching how they respond and that Clean Water Action will be reporting the outcome to their voters one door at a time.

You can contact Great Lakes Policy Director Cyndi Roper at croper@cleanwater.org.

For more information about the campaign or to take action now, visit our website at www.cleanwateraction.org/mi.



Steve Holderfield

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**TAMING STORMWATER
WITH GREEN DESIGN**

Clean Water awards ceremony spotlights real water heroes

by David Holtz

Brenda Rothstein is the kind of woman politicians fear and democracies need. A Shelby Township nurse and mother, Rothstein's the nurturing type. She cares about kids, health risks and worries about the growing number of inhalers that are showing up in classrooms because of increased asthma.

Yet she sees her government failing to come up with the money needed to reduce the contaminants that present health risks to our kids, the elderly—all of us. But a lot of us worry and care about our kids, the environment and having a healthy community. What makes Brenda different is her determination to make a difference.

On November 9, Clean Water Action presented Brenda with our first Great Lakes Champion Award. We also honored Governor Granholm, state Sen. Liz Brater (D-Ann Arbor) and state Rep. Jack Brandenburg (R-Harrison Township). That same day 50 Clean Water Action members traveled to Lansing and urged their lawmakers to support strong water withdrawal protection proposals.

It was a fun day, highlighted by an awards luncheon in downtown Lansing attended by the honorees, lawmakers, environmental officials and Clean Water Action members.

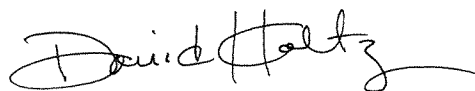
The awards are a small way of recognizing those among us who make an extraordinary commitment to improving some aspect of the Great Lakes. Governor Granholm and Senator Brater have been leaders in prodding a difficult Legislature to consider measures to protect the Great Lakes from water withdrawals.

In Brenda's case, we honored her work in helping to organize Lake St. Clair area residents to hold the government accountable on cleaning up a massive PCB contamination along Lake St. Clair in St. Clair

Shores.

The group Brenda works with, Toxic Free Shores, is pressuring the EPA, state and local officials to return the contaminated residential canals to their pre-PCB state. A \$7 million cleanup failed to get to the source of the contamination, and a report is due in January outlining the government's next steps.

You can expect Brenda and her allies to continue their watchdog and agitation roles.



You can reach Clean Water Action's Michigan Director, David Holtz, at dholtz@cleanwater.org.



Clean Water Action Great Lakes Policy Advisor, Dave Dempsey, presents the 2005 Great Lakes Guardian Award to Governor Jennifer Granholm in Lansing. Governor Granholm received the award for her leadership on proposals to protect the Great Lakes from water withdrawals and diversions.

Clean Water Action sustaining news

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Clean Water Action, founded in 1972, is a national non-profit organization working for clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally friendly jobs, and empowerment of people to make democracy work. Clean Water Action organizes strong grassroots groups, coalitions, and campaigns to elect environmental candidates and to solve environmental community problems.

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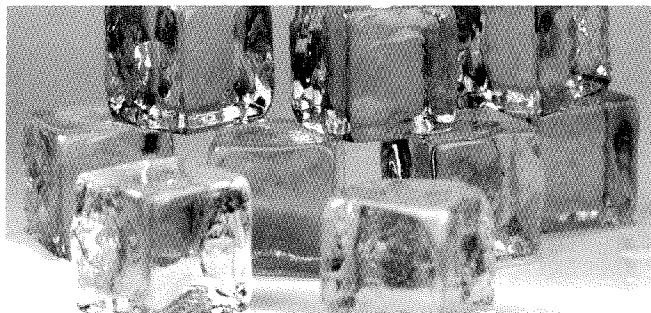
How you can continue making a difference

If you are reading this, there is a good chance that you became a member of Clean Water Action when we first knocked on your door. It is because of such generous support from our members, like you, that Clean Water Action is a leading advocate for the Great Lakes.

Whether it is stopping the threat of water exports that Michigan's waters currently face, fighting to solve the growing problem of human waste entering our beaches and drinking water sources, or preventing toxics from fouling our lakes, rivers, and streams, we could not do it without the enormous support of our more than 177,000 Michigan members. Thank you!

As the winter months approach and the New Year beckons, Clean Water Action is ramping up its efforts to keep Michigan's water in Michigan with our Great Lakes, Great Michigan campaign (www.cleanwateraction.org/mi). We are asking our members to make a special year-end gift to help pay for the costs of this effort to keep Michigan's water protected from large-scale withdrawals and diversions. Using the enclosed envelope, sending in a donation of any size will help make the difference in protecting Michigan's water and our Great Lakes quality of life.

If you have any questions or need additional information, please contact Brian Beauchamp at 734-222-6347.



Darren Hester

Thank you Great Lakes Stewards and awards sponsors

We want to take a moment to thank all of our members who support us financially. Your support is how we are able to do this work to protect Michigan's precious water. A special thanks to sponsors of Clean Water Action's 1st Annual Great Lakes Awards and our Great Lakes Stewards.

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For information on joining Clean Water Action's Great Lakes Stewards Club, contact Development Director Brian Beauchamp at bbeauchamp@cleanwater.org or 734.222.6347.



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WE VALUE OUR VOLUNTEERS. PLEASE CONSIDER DONATING YOUR TIME TO CLEAN WATER ACTION. FOR MORE INFORMATION, CONTACT VOLUNTEER COORDINATOR BETHANY RENFER AT BRENFER@CLEANWATER.ORG OR 517.203.0754.

Taming stormwater with green design

by Bethany Renfer

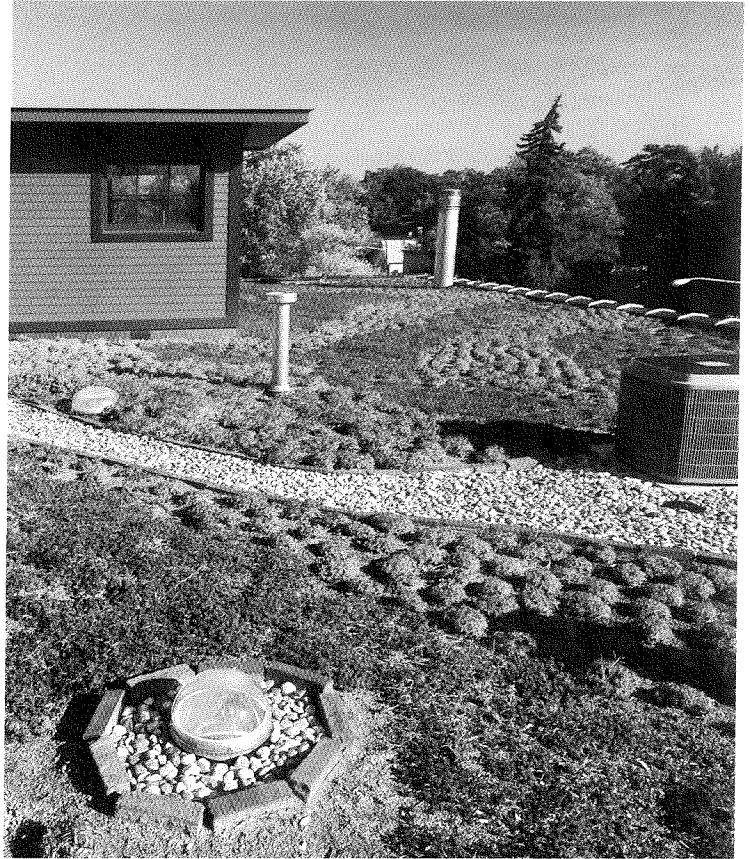
Stormwater washing off concrete and asphalt in cities and suburbs poses as big a threat to the Great Lakes as the pollution dumped into our rivers and lakes from factories and industries. So what is stormwater and why is it so dangerous?

Stormwater is rain and snowmelt that cannot penetrate the soil because pavement or other impervious surfaces prevent it. Excess water is directed instead to drains that run under our roads and empty in nearby waterways. Stormwater collects pollutants like fertilizers, pesticides, and oil as it travels from our driveways, roofs and streets and has serious impacts on water quality.

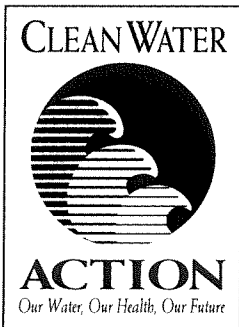
As Michigan's natural spaces get covered with roads and housing developments, stormwater pollution continues to rise. But there are environmentally friendly ways to address stormwater. Clean Water Action is working to encourage communities to use "green design" options like those being used by Bazzani Associates in Grand Rapids. Green design can keep rainwater where it falls, instead of directing it to our lakes and rivers.

CEO Guy Bazzani believes in the triple bottom line — that economic viability, social responsibility and environmental stewardship are equally important. Clean Water Action has a unique relationship with Bazzani. Not only is he a huge supporter and advocate for our issues, we moved our office into his green, mixed-use building three years ago. One of the most stunning features is the green roof. Sedum, planted on a layer of just 4 inches of soil, soaks up rain and melting snow. And Bazzani's green roof helps save more than \$2,400 per year in utility costs.

You can contact Program Coordinator Bethany Renfer at brenfer@cleanwater.org or at 517.203.0754.



This beautiful, green roof is the crowning jewel of Guy Bazzani's mixed-use Helmus Building. The sedum, planted on just 4 inches of soil, helps keep polluted stormwater out of the Grand River and saves on utility costs as well.



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Don't Privatize the Water

**Keeping Michigan's Water
in Public Hands**

**Clean Water Action
Clean Water Fund**

October 2005

Executive summary

In 1998, a fledgling company called the Nova Group obtained a permit from the Ontario Ministry of Natural Resources to remove and export **up to 156 million gallons** of water—in as many as 50 tankers per year—to thirsty customers in Asia. The resulting outcry on both sides of the U.S.-Canadian border forced the company to surrender its permit and led to the signing in 2001 by Great Lakes governors and premiers of an agreement to tighten defenses against Great Lakes water exports and promote water conservation.

In early 2005, another international corporation—this time one of the world's largest—the Nestle Corporation, negotiated a deal with the City of Evart, Michigan, to remove **up to 168 million gallons** a year¹ of water from the city's municipal wells, pipe it to a transfer station, truck it 40 miles to an Ice Mountain label bottling plant in Stanwood, and export much of it for sale and private profit outside the Great Lakes Basin. The initial outcry this time was muted, even though the outcome is potentially more damaging than the Nova Group project would have been to the long-term health of the Great Lakes Basin.

Was the lack of early protest because the project was not a significant threat to the Great Lakes? Or was it because of a public relations spin effort to obscure the legal danger and potential long-

term ecological impact posed by Nestle's most recent attempt to commercialize Michigan water?

In fact, Michigan is ominously close to ceding control of its public water resources to private interests, destroying its own legal defenses against the private capture and sale of Great Lakes Basin water and losing its central place as a guardian of the Lakes themselves. Despite a commendable effort this spring by Michigan Governor Jennifer M. Granholm to bring sense to water policy—including a moratorium on new water bottling facilities—Michigan has no statute to require water conservation. In essence, Michigan is undefended from a threat that over 90% of Michigan voters want state government to prevent.

In this report, we:

- ◆ explain how Michigan's failure so far to apply a strict public trust test to all waters, including those that private parties wish to capture and sell, amounts to a policy that water can become a private commodity and could result in the equivalent of the California gold rush for water speculators at the public's expense;
- ◆ outline the legal, policy and environmental issues associated with the commercialization of Great Lakes Basin waters;
- ◆ call on Michigan and the other Great Lakes states and provinces immediately to halt

new and increased private water ownership and sale projects;

- ◆ urge amendment of the new proposed Great Lakes Annex 2001 state-provincial implementing agreement to close a loophole that would permit water in small containers less than 5.7 gallons in size to be exempt from anti-diversion provisions;

- ◆ urge enactment of water conservation legislation;

- ◆ propose a "Traditional Water Use Protection Act" to clarify that reasonable, traditional water uses in Michigan—including the use of water for agriculture, manufacturing, drinking and other purposes—is distinct from the sale of water as a product, and that these traditional uses can continue as before, subject to centuries of common law precedent and the above water conservation legislation; and

- ◆ sketch a long-term policy to prevent the commercialization of the Great Lakes.

We also challenge misleading information put forth by the bottled water industry and its allies.

Ultimately, we argue, the decisions Michigan makes about this and similar commercial water projects in the next few years could decide the fate of the Great Lakes. It is the responsibility of this generation of Michigan citizens to assure those Lakes remain great—and in public hands.

History of Great Lakes water exports projects and schemes

The specter of long-range diversion and export of Great Lakes waters has troubled Michigan citizens for more than 20 years. The history of significant water diversions reaches back to 1900, when Illinois and Chicago officials reversed the flow of the Chicago River away from Lake Michigan to keep the city's raw sewage from fouling drinking water intakes and the swimming beaches. Under a Supreme Court order, today 3,200 cubic feet per second of Great Lakes water exit the lake at Chicago. Less well-known is the fact that the Chicago and Illinois River diversion works have the capacity to handle 8,700 cubic feet per second without any significant capital investment. During a low-water period in 1988, Illinois Governor Jim Thompson proposed tripling the diversion to help float barges in the Illinois/Mississippi River Basin.

Other plans to change the plumbing of the Lakes have ranged from serious to fanciful. A Canadian named Tom Kierans in the mid-1980s advanced one such plan. His Great Recycling and Northern Development (GRAND) Canal project proposed diking James Bay to turn it into a freshwater lake, moving the water 500 miles through reservoirs and canals to the Great Lakes and passing the margin on to the arid U.S. Southwest through the Chicago diversion and new transfer canals in Min-

nesota, Wisconsin, Ohio and New York. Although the \$100 billion pricetag of the project rendered it fantastic in the eyes of some, Quebec Premier Robert Bourassa endorsed the concept as a way of developing the northern part of the province while serving thirsty American customers. And the problems of the pesky Great Lakes could be eased, too.

In dry periods, when the waters are low, pollution is concentrated and shipping is slowed or even stopped, the James Bay waters would be used to raise the level to normal. And in wet periods, when the Great Lakes are flooding and causing erosion, the excess could be drained....adding clean, oxygen-rich water could reduce pollution in the Great Lakes and give some species of fish a better chance to survive.²

Advocates of exploiting the Lakes for commercial and humanitarian reasons were not hard to find. In a 1999 editorial about the "Great Lakes water farm," *U.S. Water News* deplored the talk by the Basin's politicians about banning exports. The paper reasoned that the Basin's "excess water now just flows out to sea, unused." Its vision of the future takes the agriculture anal-

ogy to the limit. "When precipitation is high and runoff is burgeoning and lake levels are up, a full water harvest could ensue. When times are drier and lake levels are lower...the yield from the lakes would not be as great, and the harvest would be more limited."³

The looming demand of the U.S. and the world for fresh water caught the attention of Great Lakes leaders in the early 1980s, but talk from politicians, policymakers and others has exceeded any real, meaningful conservation over the last two decades. The cause of concern as the 1980s began was the simultaneous depression of the Great Lakes economy, prompting the flight of many unemployed and underemployed workers to fast-growing regions in the South and West, and the specter of a water grab by the Western U.S. The U.S. Congress in 1976 authorized a study by the Army Corps of Engineers of water resources in the High Plains states. Worried about the rapid depletion of the Ogallala Aquifer, a groundwater resource underlying over 170,000 square miles of land from Texas to South Dakota and Wyoming to Kansas, politicians wanted the Corps to evaluate methods of protecting the agriculture industry that consumed 95% of the aquifer's water. Although the Corps concluded that interbasin transfers of water were so expensive they would require "mas-

sive government subsidies," the U.S. government had been plowing huge amounts of public money into Western water projects for decades. Increased voting power in Congress for the swelling, so-called Sunbelt states signaled the region might be able to muscle public subsidies for water diversions past Great Lakes politicians. A 1981 proposal by a Montana company to build a 1,923-mile coal slurry pipeline from Wyoming to the Duluth-Superior harbor, using Lake water to process the coal, only deepened concerns.⁴

In June 1982, Michigan Governor William Milliken organized a meeting of Great Lakes governors and Premier William Davis of Ontario on Mackinac Island to discuss the issue. The conference resulted in no decisions but enabled Milliken to remind the public of the significance of the Lakes and to refer to the fast-growing Southern and Western U.S. as the "Parchbelt" rather than the "Sunbelt." Milliken said water "can become a major component in our region's economic recovery" but warned of "a growing threat of diversion of Great Lakes waters outside our Basin without our mutual consent."⁵

The image of Texas cowboys slurping up Great Lakes water from a 1,000-mile-long pipeline was irresistible to the region's politicians. It helped promote relatively quick agreement by the governors of the eight Great Lakes states on the 1985 Great Lakes charter of principles designed to resist threats to the region's water quantity. At the

February 1985 signing, Illinois Governor Thompson decried the common belief in the U.S. that "the Sunbelt has it all over us, and they plan to snatch the final prize," the region's water.⁶

But a more immediate threat has been the thirst of the Basin states themselves. As a board reporting to the International Joint Commission (IJC) had observed in 1981, consumptive uses by cities, power plants, agriculture and manufacturing industries in the Great Lakes region could grow fivefold by the year 2035. Reducing water flow in the system eight percent, the in-Basin demand had the potential to lower water levels in Lakes Michigan, Huron and Erie six inches, with dramatic ecological and economic effects.⁷

The 1985 Charter was in part an effort to curb the water appetite of the signatory states and the provinces that joined it. Calling for the enactment of water withdrawal regulation and better data collection and analysis of water uses, it offered the promise of a new stewardship ethic.

An Ontario company, the Nova Group, received a permit in the spring of 1998 from the Ontario Ministry of Natural Resources to export the equivalent of up to 50 tankers per year—156 million gallons—of Lake Superior water to anticipated customers in Asia. Despite Great Lakes Charter commitments, the Ontario agency had failed to notify or consult with its neighboring states on the Nova permit, which became news only after it had been granted. Although the amount of water the company

proposed to withdraw from Lake Superior was negligible when compared to the volume of the second largest lake in the world, **the permit had the potential to set a precedent that Great Lakes water was a marketable product.** Even bigger was the symbolism of Superior water traveling to Asia.

"One idea we came up with was that on Canadian TV we see Third World Asian countries that are starving because there is no water to be found," Nova Group John Febraro told a reporter. "We're looking at this as a two-fold answer: They need the water over there, and here in northern Ontario our unemployment is very high."⁸

"This is Pandora's box," U.S. Representative Bart Stupak of Michigan's Upper Peninsula complained. "We've always worried that somebody will try to ship Great Lakes water to arid regions. If we ship to Asia, what's to prevent shipping to the Southwest or Mexico? Where do you stop?" Under pressure, the Nova Group surrendered its permit, but a point had been made. The Great Lakes states set about refashioning the 1985 Charter and bringing it up to date to reflect both political and legal realities. In 2001, the Great Lakes governors and premiers signed an agreement to come up with a new standard to protect the Lakes from overuse and exports. That standard is now embodied in the so-called Great Lakes Charter Annex implementing agreements, which recently underwent a 60-day public comment period.

What's right and wrong with recent attempts to defend the Lakes

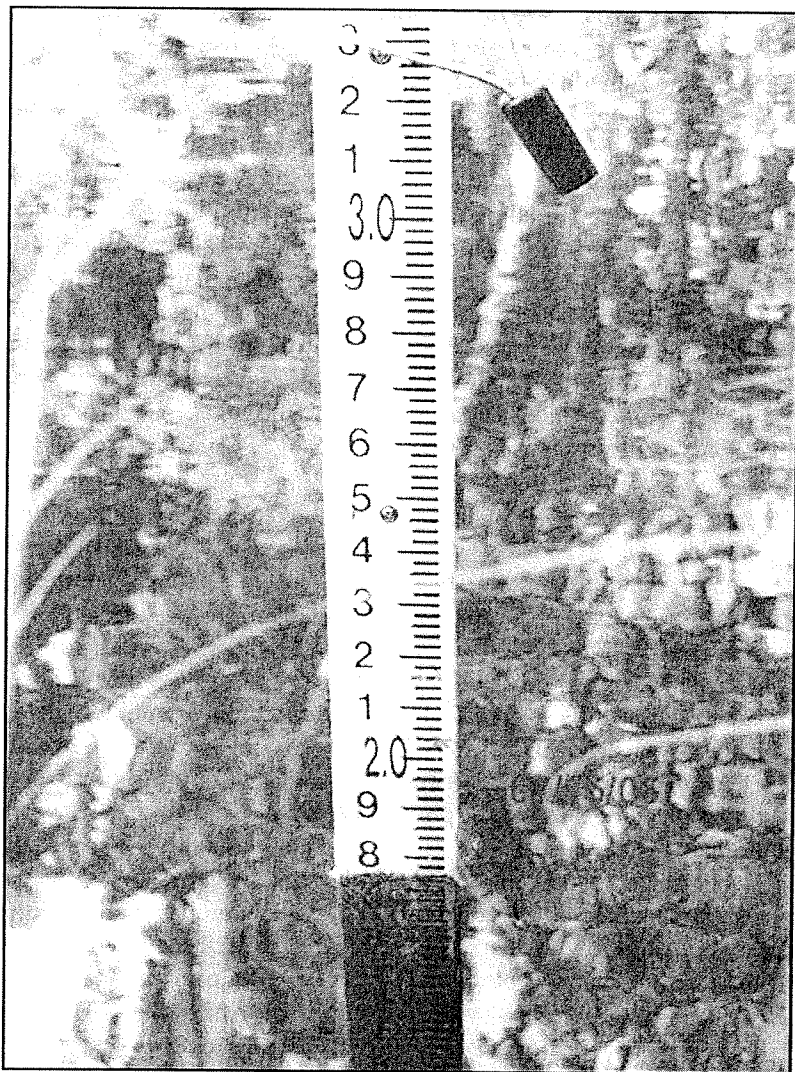
The process leading to the new draft agreements has been based on both sound and unsound reasoning. One example of the latter is the legal analysis that gave birth to the Annex itself. The analysis has been challenged by experts who say it inaccurately suggests the Great Lakes states and provinces cannot bar water exports.

To set the framework for the Charter Annex, the Council of Great Lakes Governors commissioned an analysis of the legal issues involved in defending the Great Lakes from large-scale water withdrawals.⁹ Submitted to the governors in the spring of 1999, the analysis echoed the concern of the governors and other experts about the potential harm to be caused by large-scale water withdrawals and observed, "...[T]he ability of any authority—state provincial, federal or binational—to impose outright prohibitions on water exports is constrained by U.S. and Canadian constitutional and trade law." The lawyers called for "a commonly applied, resource-wide decision-making standard that ensures benefit to the waters and water-dependent resources of the Great Lakes Basin."

Other legal experts have challenged the conclusions submitted to the Great Lakes governors and premiers. Ralph Pentland, a Canadian water expert, complained that the resulting water conservation "proposals


start with the fundamentally flawed assumption that anyone anywhere in the world has the same right to Great Lakes water as basin residents. They use the specter of international trade

rules and U.S. commerce law to claim we have no choice. But, we do...The International Joint Commission reconfirmed last month that we can treat in-basin and out-of-basin uses differently."¹⁰



A gauge on Michigan's Dead Stream shows reduced water levels, which Michigan Citizens for Water Conservation contends have been exacerbated by the private pumping of spring water for sale and export outside the Great Lakes Basin.

Governments could also revise the 1909 Boundary Waters Treaty between the U.S. and Canada to bar large-scale diversions, but that has not been proposed in the latest round of discussions.



In addition to having authority to treat in-basin and out-of-basin uses differently, governments could also revise the 1909 Boundary Waters Treaty between the U.S. and Canada to bar large-scale diversions, but that has not been proposed in the latest round of discussions.

One of the compelling reasons for the new implementing agreements is that it would enhance efforts to deal with the greatest short-term threat to Great Lakes water quantity. As the IJC observed in 2000, the *Great Lakes states and provinces themselves* will place an increasing demand on the resource. In the most likely scenario projected by the studies, water consumption in the U.S. section of the Great Lakes Basin was expected to rise 27.05% by the year 2025. Study authors explained that this is the likely result of increasing use of Great Lakes water in manufacturing and, to a lesser extent, to support municipal water supply.¹¹

But the IJC had even more to say that challenged the conventional wisdom about the source of threats to the hydrologic integrity of the Great Lakes system. "In the short run, pressures for small removals via diversion or pipeline are most likely to come from growing communities in the United States just outside the Great Lakes Basin divide where

there are shortages of water, and available water is of poor quality. The cost of building the structures needed to support such diversions would be relatively small by comparison to the cost of building structures to move water vast distances. Population distribution suggests that several communities that straddle or are near the Great Lakes Basin divide, particularly communities in Ohio, Indiana and Wisconsin, may look to the Great Lakes for a secure source of municipal and industrial water supplies in the future."¹² Within two years of the IJC report, in fact, suburbs of Milwaukee, growing communities near the Lake Erie divide in Ohio, and Indiana communities began pressing for access to Great Lakes water to support their expansion. The proposed Annex implementing agreements would provide these communities an opportunity to seek Great Lakes Basin water, so long as they lie within "straddling counties."

Michigan has had its own problems with Annex 2001. For the first time in the state's history, the Annex would require water users to abide by statutory rules and to practice water conservation. After so many years of taking water without limits—except for the occasional lawsuit against one user by an adjacent

user—some Michigan businesses and municipalities have not accepted the idea of short-term sacrifice to assure long-term protection of the Great Lakes. Echoing the lumber barons who said the timber of the Great Lakes states would last 500 years—and then cut it down in less than 50—a spokesperson for the Michigan Manufacturers Association said, "There's no groundwater withdrawal problem in Michigan. We're at the center of the Great Lakes."¹³

As the IJC noted in its 2000 report:

"The waters of the Great Lakes are, for the most part, a nonrenewable resource. They are composed of numerous aquifers (groundwater) that have filled with water over the centuries, waters that flow in the tributaries of the Great Lakes, and waters that fill the lakes themselves. Although the total volume in the lakes is vast, on average less than one percent of the waters of the Great Lakes is renewed annually by precipitation, surface water runoff and inflow from groundwater sources."¹⁴

Despite containing over six quadrillion gallons of water, about 18% of the world's surface fresh water, the Great Lakes are not limitless. They are a gift of the glacial age, vulnerable to being lowered not just by climate change but also by increasing use.¹⁵

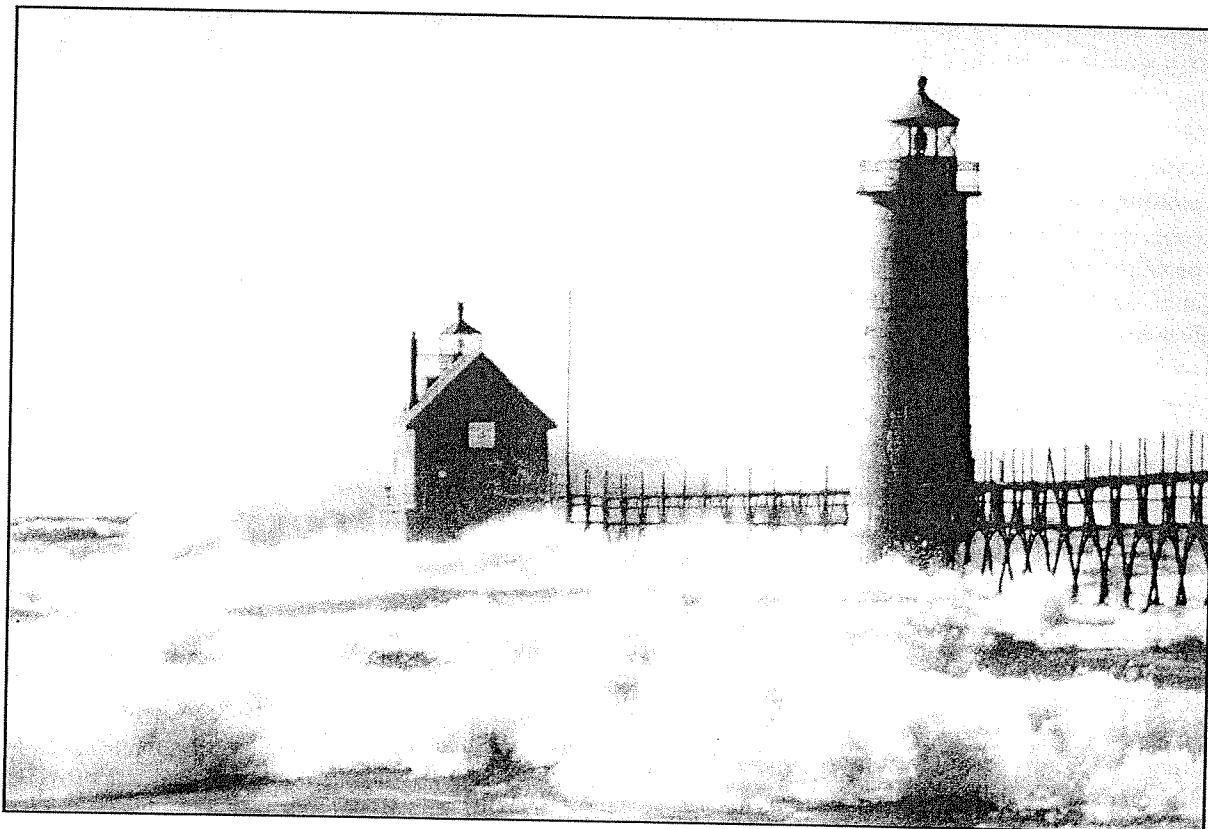
A new threat: private sale of Great Lakes Basin water

Sales of the U.S. bottled water industry nearly tripled in the 1990s, reaching \$6.5 billion in 2001. During the same period, per capita bottled water consumption in the nation rose from nine to 20 gallons per year. Initially stimulated by concern over the safety of public water supplies—a fear reinforced by the Milwaukee cryptosporidium tragedy in 1993—the use of bottled water soon became a matter of consumer convenience and a triumph of marketing. The plas-

tic bottle of water has become as much a personal companion as an iPod, coffee mug or cell phone—a necessary attendant to the fashionable “lifestyle” of the new century. In the late 1990s, major water bottlers coveted the groundwater of the Great Lakes region, challenging governments and citizens to decide how far they were willing to permit water to become a commodity for sale like any other.


Many Michigan citizens are already aware of the fight over

the capture and bottling of water by Perrier (the company was later purchased by Nestle Corporation) in Mecosta County. After being turned away by Wisconsin citizens angry about the potential impact of high-volume water pumping by the company on their own domestic wells and the local environment, Perrier turned its sights on Michigan, where officials of the administration of former Governor John Engler threw down a welcome mat.



Seemingly inexhaustible in power and quantity, the Great Lakes are largely a result of glacial melt, and a fragile balance exists between use and natural replenishment.

Section 1109 of the Water Resources Development Act (WRDA), legislated in 1986 and strengthened in 2000, provides that no new or increased diversion or export of Great Lakes Basin water can take place without the approval of each of the eight governors of the Great Lakes states.



In 2001, ignoring pleas from citizens, the state Department of Environmental Quality issued a permit authorizing the company to capture and sell up to 210 million gallons of water per year. A grassroots organization, Michigan Citizens for Water Conservation (MCWC), raised over \$400,000 to wage a court fight against the Nestle project. In a landmark ruling in November 2003, Judge Lawrence Root found in favor of MCWC and ordered the Mecosta County pumping to halt. But four days later, the Michigan Court of Appeals issued a stay of the ruling and agreed to hear an appeal brought by the company. Nestle continues pumping in Mecosta County, and a hearing on the appeal took place June 14, 2005 in the Michigan Court of Appeals.

In late 2004 and early 2005, at the invitation of the city manager of Evart, a community of 1,700 about 90 miles north of Grand Rapids, Nestle negotiated a pact with the City that would dedicate one of its municipally-owned wells exclusively to the company. Nestle proposed to pipe the water to a nearby transfer station, then truck it 40 miles to the already-existing

bottling plant in Stanwood. From there, the water would join the Nestle commercial stream, much of which flows not only out of Michigan, but also out of the Great Lakes Basin.¹⁶ In effect, Nestle was proposing a new export of Great Lakes Basin water—and circumventing a federal law.

That law, Section 1109 of the Water Resources Development Act (WRDA), legislated in 1986 and strengthened in 2000, provides that no new or increased diversion or export of Great Lakes Basin water can take place without the approval of each of the eight governors of the Great Lakes states. Asked to rule on whether the original Nestle project was covered by this law, then-Attorney General Jennifer Granholm said in 2001: "The withdrawal and bottling of such water for sale in interstate commerce outside the Great Lakes Basin would constitute a diversion or export 'for use outside the basin' and therefore would be subject to the WRDA." Governor Engler ignored her advice and permitted the project to proceed without regional review under WRDA.

As governor, Granholm in

May 2005 acted on her own prior interpretation of the federal law by asking Nestle to certify that it would sell the Evart water entirely within the Great Lakes Basin.¹⁷ At the same time, she directed state agencies to impose a moratorium on the issuance of new permits for bottled water facilities.

While laudable in their intent, the governor's twin directives stopped short of providing the full protection Michigan citizens deserve from the threat of private water for sale projects. First, by permitting the Evart project to go ahead—even if the sale of the water is limited to the Great Lakes Basin—her action condoned the second new large-scale water for sale project of the new century in Michigan. Second, the moratorium applies only to a subset of water for sale—bottled water. The moratorium should apply to all bids for private water ownership, including bottled water, pipelines, tankers and others.

This point is important to underscore. Supporters of private water bottling projects argue that even hundreds of such operations will have little direct impact on water quantity and associated resources because of the vastness of the Great Lakes water supply. But the issue is not the overall resource impact of many bottled water operations—it is the fact that permitting private ownership of water (in bottles or by other means) may permanently privatize the waters of the Great Lakes, diminishing or ending public control of the waters by the governments that serve the public.

The paramount importance of the public trust doctrine

Nestle and its supporters have argued that the withdrawal, capture, bottling and private sale of water is just like any other use of water in Michigan and that Governor Granholm's recent moratorium and restrictions on the Evert permit are illegal. But Nestle has blurred the issue. The precedent being set by the two Nestle projects in Michigan has to do with private ownership of water, a breach of the public trust doctrine. No other major water withdrawer in Michigan has made the claim to private ownership that Nestle has. Almost all other major bottlers pay public utilities for the water they take from community systems (rather than springs).

Under traditional interpretations and implementation of common law, water in Michigan and the other Great Lakes states is a commons, or public trust resource. This doctrine has a rich history that Michigan policymakers would do well to understand.

The public trust doctrine is an evolving common law principle which holds that certain natural resources are common to all, are held in trust for the people by the state and cannot be removed from public ownership. These resources were traditionally held to be shoreline areas, navigable waters and the lands beneath the navigable waters. The uses traditionally protected were commerce, navigation and fishing. Although the U.S. Supreme Court decided the first landmark

public trust case in the United States in 1892 in relation to lake-front lands in the City of Chicago,¹⁸ the interpretation of the doctrine broadened to include additional natural resources as national concern mounted about degradation of the environment in the 1960s and 1970s.

Legal experts have traced the public trust doctrine to Roman law.¹⁸ A classification scheme in ancient Roman law divided properties into public and private categories. Within the public categories were the air, the waters of natural streams, the sea and the seabed.

Following the Norman conquest, English common law adopted much Roman civil law, although with modifications. In British law, title to public lands was held in trust by the king for the benefit of the nation. While the king could grant land under English waters, such as navigable waters and tidelands, to private owners, such grants were subject to the public's paramount right to the use of the waters. The king could neither diminish nor destroy that right. Any grant that interfered with the implied reservation of the public right or harmed the public interest was rendered void. The Parliament could, however, exercise its police power to enlarge or restrict public rights in order to advance a public purpose.

British courts reasoned that the common right to use the sea and navigable rivers was im-

portant to commerce and trade and that private appropriation of the use could impair such public benefits. They permitted state regulation of the public use of navigable waters only in the public interest and only consistent with the preservation of a public right.

The common law of England then became the foundations of the law of the original 13 American colonies and, subject to modifications by Congress and the states, of the law of the United States. Several core principles were identified and passed on to the 37 states that have since joined the Union. These principles hold that each state:

- ◆ has public trust interests, rights and responsibilities in its navigable waters, lands beneath those waters and the living resources therein;
- ◆ has the authority to define the boundary limits of the lands and waters held in public trust;
- ◆ has the authority to recognize and convey private proprietary rights in its trust lands with the corollary responsibility not to substantially impair the public's use and enjoyment of the remaining trust resources;
- ◆ has a trustee's duty and responsibility to preserve and assure the public's ability to fully use and enjoy public trust lands and waters for certain trust uses;
- ◆ does not have the power to abdicate its role as trustee of

the public's rights in trust resources.²⁰

Interpreting this doctrine, courts have regularly held that neither tidewaters nor navigable waters were granted by the Constitution to the United States but were reserved to the states.

The definition of the waters subject to the public trust doctrine has evolved. In England, few waters were considered navigable that were not subject to tides; hence, tidal and navigable waters were virtually synonymous. Faced with a dramatically different topography and hydrology, American courts have had to wrestle with the terms "tidal" and "navigable." Until 1851, the U.S. Supreme Court held to a tidal test of navigability. But in a case involving the collision of vessels on Lake Ontario, the Court upheld an 1845 act of Congress extending the reach of federal courts to all navigable-in-fact lakes and rivers.²¹ Ultimately, the Court held that for title purposes, lands beneath navigable waters passed to the new states as they entered the union on an equal footing with the 13 original states.

The question of which lands in freshwater ecosystems were public trust lands was initially in dispute, since tides did not wash them. But more than a century after the landmark U.S. Supreme Court decision in *Barney v. Keokuk*,²² it is now settled law that lands under navigable freshwater lakes and rivers were within the public trust given the 37 states admitted subsequent to the initial 13, including Michigan. Such lands are held to extend to

the ordinary high water mark.

Great Lakes, the lands under them, connecting waters and all tributary lakes and streams up to the point of navigability (as defined by each jurisdiction) are, therefore, subject to the public trust doctrine. Under this doctrine, the title to water is in the states (to be held in perpetuity) for the benefit of navigation, fishing, boating, swimming or other purposes closely related to fundamental human needs. In recent decades, the public trust doctrine has also been extended to groundwater resources, particularly those with a provable connection to surface waters—like those Nestle has sought to remove from Mecosta County.

The public trust doctrine imposes some or all of the following standards on any conveyance to a private party of a public trust resource: (1) express authority for private diversion and sale such as licensing, (2) a public purpose, (3) no material harm may be done to the waters and public trust or related purposes. Even if the foregoing standards are met, there must be fair compensation to the public for what is transferred. **Michigan has so far failed to enact a statute meeting any of these four conditions when it comes to private water for sale projects.**

In addition to the public trust doctrine, the common law of several Eastern states, including Michigan, prohibits diversions of water off-premises or out of a watershed, particularly where the purpose of the diversion is to market the water elsewhere. Further, use of water has been limited

traditionally by recognition that certain uses have more value than others—preferred uses such as traditional non-artificial uses vs. artificial uses or uses involving diversion. The Nestle/Ice Mountain litigation in Michigan has resulted in a circuit court ruling that diverting water out of a watershed—in that case for sale elsewhere—that results in diminishment of a navigable lake or stream is unlawful.

Therefore, Michigan will stand on strong legal ground—under public trust law and water law—if it enacts a law meeting the four conditions noted above for public trust law or the common law riparian law principle that prohibits any diversion of water that diminishes the flow or level of a lake, stream or aquifer.

The danger of failing to apply a strict public trust test to all waters, including those that private parties wish to capture and sell, is that Michigan will then be expressing by its silence a policy that water can become a private commodity. This could lead to:

- ◆ private parties making a claim that groundwaters beneath land they own are a "mineral" they can sell to any customer;²³

- ◆ huge costs to municipalities that will need to buy out private "owners" of water to avoid costly competition;

- ◆ the construction of water pipelines by and for and under the ownership of private users; and/or

- ◆ a proliferation of water bottling projects that will cause both local and basin-wide harmful impacts.

The bottled water spin

The entire debate about a proposed moratorium on the sale of water has been distorted by industry claims that constitutional and case law forbids distinguishing between in-basin and out-of-basin uses, and requires that statutes and policies look only at the “natural resource impact” of a proposed use. That is flatly wrong.

Natural resource impact is important, but it is not the only basis for regulation of Great Lakes water withdrawals, diversions or uses.

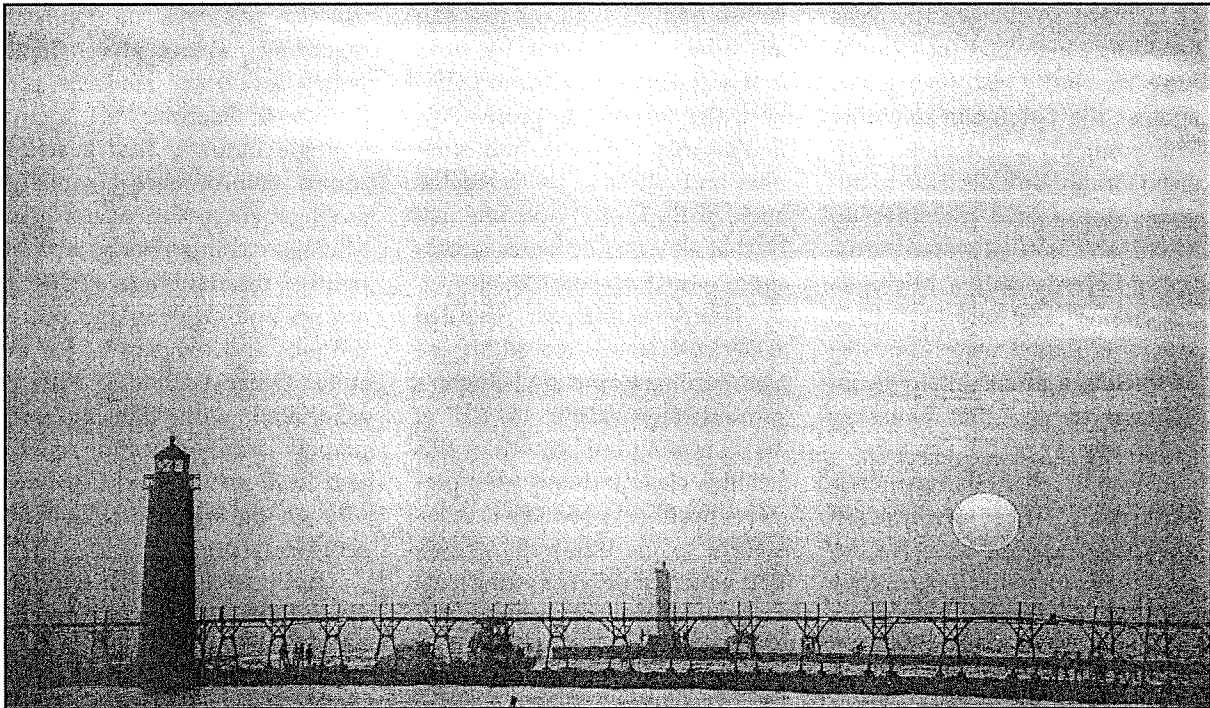
Among other issues to be considered is the primary is-

sue of control and ownership of water—whether it is ultimately to be by the public or by private parties—and the implications of private vs. public ownership. Looking at *ownership* issues is fundamentally important because it illuminates the distinction between using water as an ingredient or process material (in the manufacture of apple juice, potatoes or automobiles) and the sale of *water itself* (in bottles, tankers, pipelines or other conveyances) for profit.

Simply put: denying there is any difference between *using* water to make fruit juice and *selling*


water itself is like denying any difference between *using* Michigan’s soil to grow crops and *mining* the soil, packaging it and selling it to faraway markets.

Riparian law (the law relating to the rights of those living or located on the bank of a natural watercourse such as a river) clearly sanctions the reasonable use of water by riparians for domestic uses, including uses as an ingredient or process material, provided that other uses are not adversely affected. It does *not* sanction the sale of water out-of-basin for private profit. In other words, there is no le-



The questions facing Michigan and other Great Lakes jurisdictions are whether the private ownership of water—traditionally considered a public trust resource—will be allowed and what that means for the ability of the public to maintain control of that water.

There is an enormous social and legal distinction between public utilities that may bottle a tiny percentage of their capacity for local consumption and a gigantic special interest that bottles virtually all of its capacity for sales far outside the local area.



gitimate common law claim of a private property right to capture surface or groundwaters for sale. Michigan, therefore, is well within its powers to reserve and manage that ownership right to itself on behalf of the people, either through a moratorium or through licensing and regulation.

After Governor Granholm issued her executive directive restricting the sale of water from Nestle's Evart project to the Great Lakes Basin, Nestle issued a statement riddled with errors of fact that challenged the basis for addressing water for sale. On June 17, Nestle also filed a suit against the Granholm decision. The company's statement criticized Granholm's decision to impose "detrimental measures on Michigan's bottled water industry and Nestle Waters' Michigan operations" and said her action put "the bottled water industry in Michigan at an unfair disadvantage to all other beverage producers in and out of state."

Among other misstatements, Nestle said: "These measures not only raise serious concerns for all Michigan water users, they trample the rights of Michigan's municipal water departments." This is simply not true. There is an enormous social and legal distinction between public utilities that may bottle a tiny percentage of their capacity for largely local

consumption and a gigantic special interest that bottles much of its water for sales far outside the local area.

In Nestle's statement, Kim Jeffery, president and chief executive officer of Nestle Waters North America, said Granholm severely restricted "the ability of Michigan's bottled water industry to grow, compete in the marketplace and contribute to the economic well-being of the communities in which they operate. These conditions are unfair and discriminatory." But this assumes bottling water is just like any other use of water. Far from it. It is an attempt to capture public water for private profit. This is distinctly different than other uses and needs to be treated as such, or the logical outcome will be that all water becomes a commodity no different than oil.

Jeffery continued: "Bottled water companies, as a group, use a miniscule amount of Michigan's groundwater—0.06% (6/100 of 1%). Limiting the growth of this healthy, clean industry that provides healthful products is a disservice to the hundreds of bottled water employees in the state and the millions of bottled water consumers."


The current question is not the amount of water that is being used by bottlers—although the proposed Evart project would ultimately drain more water than

the infamous Nova Group export of 1998. The issue is private ownership of public water. Nestle is in a sense arguing that while the Nova Group's proposal to export water in tankers for private sale was unacceptable, the same volume of water placed into Nestle bottles and shipped out of the Great Lakes Basin in tankers (or many trucks) is acceptable. This is an absurd distinction.

Added Jeffery: "The decision to dictate conditions on the sale of bottled water and place a moratorium on any future water use also sidesteps the real issue regarding meaningful public policy for water resource protection. It discriminates against a single industry that practices sound environmental management practices and places good Michigan companies at a competitive disadvantage and jeopardizes both existing and potential jobs and investment for the state. Other economic benefits associated with this industry, namely tax revenues for schools and local services, and community giving are also potentially sent elsewhere.

But it is Nestle that has chosen to discriminate. Rather than use water in accordance with Michigan's traditions and centuries of common law precedent, Nestle has chosen to separate itself from other users by trying to cash in on nature's endow-

The issue is private ownership of public water. Nestle is in a sense arguing that while the Nova Group's proposal to export water in tankers for private sale was unacceptable, the same volume of water placed into Nestle's bottles and shipped out of the Basin in tankers (or many trucks) is acceptable. This is an absurd distinction.



ment. This simply cannot be condoned.

Jeffery added, "Nestle Waters agrees that Michigan's water use laws are not strong enough. We have actively participated in a process to improve those laws, which would protect the resource and bring certainty to our business and every other Michigan manufacturer, municipality and resident that uses water."

If Nestle had been serious about this point, it would not have sought to capture and sell public trust waters until after a statute was passed and would not then have sued the state when the governor tried to "bring certainty" with her directive. Instead, it has tried to exploit a gap in Michigan law and to eradicate the federal law that gives Great Lakes states some control over new or increased diversions.²¹

Nestle concluded: "For Michigan, whose major economic advantage over other states is its water resources, to choose winners and losers of water use will lead down a path of negligence in resource protection. Whether you're talking about golf courses, farmers, manufacturers, beverage makers, electricity producers or water bottlers, the fact is the

water is being used. We would hope Michigan lawmakers take action to ensure water use policy is aimed at resource protection that is fairly applied to all users and based on scientific principles."

The only losers from the governor's May 27 moratorium were those who want to capture public trust waters for private profit. No traditional users are affected by the moratorium nor should they be, as they are acting in accordance with common law principles. In other words, those who use water in ways sanctioned by that common law, such as Michigan public water suppliers, farmers, manufacturers and others, have nothing to fear from a moratorium on shipments of water as a product outside the Great Lakes Basin.

Nestle's attempt to blur the distinctions between its radical new exploitation of Michigan water and traditional water uses practiced by golf courses; farmers, beverage makers and others is a gross disservice to the public debate and should fool no one. The Michigan Legislature, we argue, should make clear the distinction in a new traditional Water Use Protection Act.

Such a statute would make it clear that uses of water that have been protected by centuries of riparian law—such as manufacturing, irrigation, drinking water supply and others—will continue to be protected. However, conversion of public water to private ownership will be subject to stringent regulations or an outright moratorium.

Until this legislation is enacted, the governor's moratorium on all new or increased private water for sale projects is the proper course for Michigan to follow. All the legal and natural resource implications of implying or authorizing licensing and regulation of water sale for private profit—including trade law implications and private property water claims that could result—should be studied, aired and debated so that the public may fully understand the policy implications, and a new, sound water law that addresses these questions should be enacted. Michigan should not simply sleepwalk into a new era of permitting public trust waters to be treated as private commodities for sale and profit.

Recommendations

We propose the following comprehensive water protection strategy:

1 Prohibit immediately the further private ownership and sale of any and all groundwater and surface water in Michigan without prior legislative approval, thus upholding existing common law that defines water as a public trust resource. The Legislature should only approve such projects if they meet a strict test: that they serve a public purpose and cause no material harm to the waters and public trust or related purposes. The governor's Executive Directive 2005-5, issued May 27, should be revised and broadened to include all water-for-sale projects.

2 Enact a Traditional Water Use Protection Act to assure that traditional reasonable uses of water in Michigan for agriculture, manufacturing, drinking and other purposes may continue subject to existing law, while any private water for sale is subject to express approval in advance by the Legislature and can only be approved if it meets a strict public trust test.²⁵

3 Require permits for large water users. Institutions that use large amounts of water from the Great Lakes don't always need permission from the state to withdraw water. Michigan needs to pass a new law that will require permits for any water user

capable of withdrawing more than two million gallons a day or 100 million gallons a year.

4 Close the loophole in state law that threatens smaller lakes, streams and wetlands. Even if we had a strong permit law, some smaller water uses could damage nearby streams or wetlands. We should reform our current laws, the Inland Lakes and Streams Act and the Wetland Protection Act, to protect these small bodies of water. All uses should be included in the law, including pumps that draw from groundwater to increase lake levels.

5 Create a fair public process for the governor to veto water loss. The federal Water Resources Development Act (WRDA) allows Michigan's governor to veto projects that will cause a loss of water from the Great Lakes area. However, Michigan lacks a process for using this law. We should adopt clear guidelines for veto decisions, including public notice and hearings.

6 Enact state water conservation or stewardship certification. Michigan should be a leader in promoting conservation and efficient water use. Each group of large water users (such as agriculture or manufacturing) should agree on standard conservation measures for that group. Each permitted user should agree to use generally-accepted

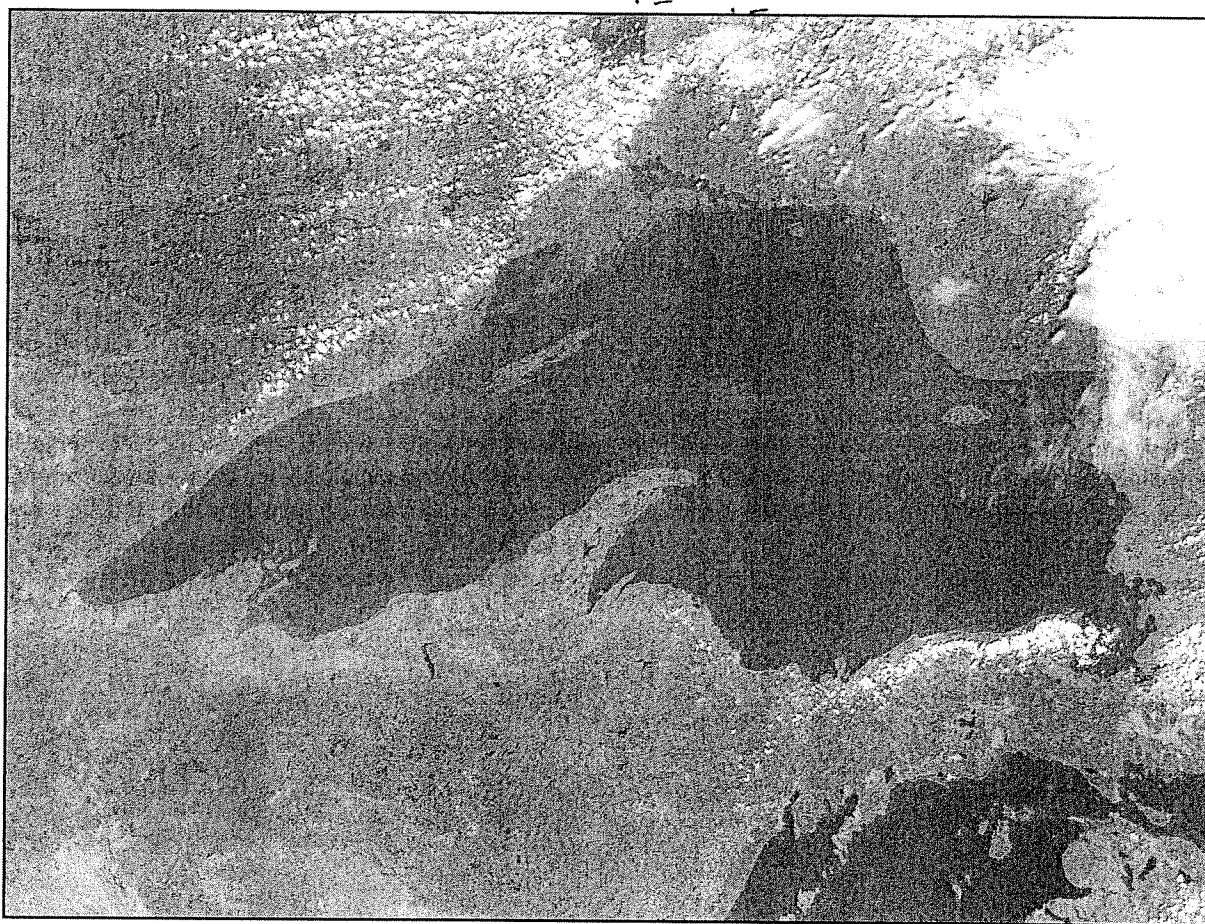
conservation practices. Higher standards should apply if overuse is causing water conflicts or damage to natural resources.

7 Improve data collection. Currently, agricultural interests do not report with the same accuracy as other users, and pumps that draw from groundwater to increase lake levels do not report at all. All water users in Michigan should report with the same format.

Clean Water Fund also calls on all parties to the Great Lakes Anneximplementing agreements (including seven other Great Lakes states and the provinces of Ontario and Quebec) to:

Close a loophole exempting from regional review and water conservation provisions water that leaves the Great Lakes Basin in small containers.

Such a loophole clearly caters to a single special interest, the bottled water industry, at risk to the Great Lakes Basin. Whether it leaves in bottles, tankers or pipelines, water exported from the Basin for private sale has the potential to cause ecological harm, is inconsistent with the public trust and should be held to the strictest conditions or prohibition.



Lake Superior alone holds 10 percent of the planet's available surface fresh water. In 1998, an Ontario company proposed taking 50 tankers per year of Superior water to customers in Asia, but the resulting controversy killed the project.

Michigan should ban the private capture and sale of water by companies like Nestle because it is the will of the people that all of Michigan's public trust waters and their tributaries (both surface and groundwater) continue to be held in public trust and not turned into a commodity for sale. This is important: (a) to assure the integrity of the ecosystem and current in-basin uses and (b) to protect the public's collective property interest in these world-

class waters at a time of increasing threats of water commercialization. For similar reasons, we support the continuation of the common law riparian principle that protects the integrity of flows of lakes and streams from diversions and private sale of water.

Michigan's fate, and that of the Great Lakes, could largely be determined by the course state officials set on the commercialization of water and the

conservation of water. A policy that fails to recognize the danger caused by private ownership of the public's water would risk the public's ability to protect and manage the Great Lakes. A policy that prevents commercialization of water and protects traditional users in the state, while promoting conservation and wise stewardship, protects Michigan's economy and rises to the challenge of defending the greatest freshwaters in the world.

Appendices

Michigan's Water Privateers

Discussion: To discern the extent to which Michigan has already sanctioned the private bottling and sale of water, Clean Water Fund made a Freedom of Information Act request in late May 2005 of the Department of Environmental Quality (DEQ). DEQ supplied two lists. One is a list of water bottlers approved by DEQ (Appendix A). The second list (Appendix B) consists of water bottlers approved by the Michigan Department of Agriculture (MDA). Although the lists overlap, they are far from identical. The fact that the two agencies only recently became aware of the two lists

indicates a need for improved coordination in the review of water bottling operations and a unified permitting or licensing process.

The additional water bottlers listed by MDA appear for the most part to be small operations, including grocery stores that bottle and sell water.

Both lists do not contain information on the volume of water withdrawn even by the largest bottlers, such as Coca-Cola, who use municipal water supplies—in essence, bottling purified tap water. Michigan's water reporting statute should be revised to require reporting of such withdrawals.

Appendix A
"Approved Michigan Bottled Water Sources"
Obtained from Michigan Department of Environmental Quality
under Freedom of Information Act Request (June 2, 2005)¹

Large-scale

Name	Source type	Volume (2003)	County	Date approved
Abso-Pure	GW	3.39 MG	Jackson	10/1/93
Aquafina	MW	Unknown ²	Wayne	5/15/98
Coca-Cola	MW	Unknown	Wayne	5/23/05
Faygo	MW	Unknown	Wayne	2/1/94
Nestle(Plant)	GW	25.3 MG	Mecosta	4/29/02
Nestle	GW	115.4 MG	Mecosta	4/29/02
Shay Water	GW	1.17 MG	Saginaw	10/14/80

Small-scale

Name	Source type	County	Date approved
AK'WA Water Systems	GW	Oakland	5/12/98
City of Midland	MW	Midland	7/20/00
City of Monroe	MW	Monroe	5/14/99
Purified Water to Go	MW	Macomb	5/13/99
Mcattee Organic	GW	Washtenaw	8/6/99
Arbor Springs	GW	Washtenaw	2/4/81
Besco Water Treatment	GW	Calhoun	3/9/93
Country Fresh	GW	Kent	6/18/92
Crystal Water	GW	Genesee	1/21/80
The Water Shed	GW	Eaton	3/31/95
Aqua Springs	GW	Isabella	8/14/86
Tahquamenon Artesian Well	GW	Luce	5/22/96
Cascades Bottled Water	MW	Kent	7/23/96
Aqua-Fine Water	MW	Allegan	1/12/94
Aqua & Mas	MW	Allegan	1/15/01
Purified Water	MW	Macomb	12/11/02
Houseworth Realty	GW	Emmett	8/26/02
Purified Water	MW	Wayne	6/18/02
Crystal Falls Springs	GW	Iron	4/7/02
Purified Water	MW	Oakland	3/11/03
Aqua Advantage Purified	MW	Oakland	6/30/03
Norway Springs	GW	Dickinson	11/25/03
Tri County Water	MW	Jackson	7/14/03
AquiEssence	MW	Macomb	12/3/03
Zimmer Marble Bottled	GW	Jackson	12/18/03
H2O Express	MW	Oakland	3/4/04
Baremans Dairy	MW	Ottawa	7/20/04
Purified Water	MW	Macomb	11/16/04
Gordon Water Systems	MW	Kalamazoo	2/11/05
Cielo Water Company	MW	Huron	2/15/05
D & D Water Care	MW	Calhoun	4/20/05
Purified Water	MW	Macomb	5/13/99
Spring Mountain	MW	Oakland	12/20/89
City of Mt. Clemens	MW	Macomb	5/20/05

¹Facilities listed as "inactive" by DEQ not included.

²State law requires reporting only by "self-supplied" users withdrawing 100,000 gallons or more per day, not those, like Aquafina, that capture water from municipal supplies.

Appendix B
Additional Water Bottlers
Approved by Michigan Department of Agriculture³

Company name	City
Mccardel Culligan	Traverse City
Village and Country Water Treatment	Ann Arbor
G & F Sales, LLC	Breckenridge
Crystal Water Company	Burton
Central Water Treatment	Davison
U.S. Waterway Inc.	Grand Blanc
PBG Michigan LLC	Howell
The Water Store North	Jackson
The Water Store	Jackson
Northern Falls Water	Kentwood
Jilbert Dairy Inc.	Marquette
Norway Springs	Norway
MEW LTD-Culligan	Oscoda
Cielo Water	Port Austin
Avita Artesian Water LLC	Roscommon
Clear Advantage Bottled Water	Traverse City
Pure Water Works	Traverse City
Arbor Farms Market	Ann Arbor
Freshwater Express	Berkley
Dad and Sons Services	Charlotte
Spring Valley Pure Water	Farmington Hills
Northern Falls	Grand Rapids
Kaat's Water Conditioning	Grand Rapids
Aqua Fine	Holland
Quality Dairy Company	Lansing (2)
Wingert's Food Center	Mayville
Crystal Clean Water	Owosso
Fuller Life Water	Royal Oak
American Aqua	Saline
Pure Fact, Inc.	St. Joseph
Osprey Hills Distributing	Wixom
Independent Water Service	Martin
Besco Water Treatment Inc.	Battle Creek
Country Fresh	Grand Rapids
The Watershed	Lansing
Elco Water Distributing	Midland
Crystal Pure Water Inc.	St. Louis
Pure Water Station LLC	St. Clair Shores

³Obtained in the same Freedom of Information Act request from the Michigan DEQ, this list was provided to DEQ by MDA. Those included on DEQ's own list are not listed a second time on this page.

Endnotes

¹This would be in addition to the 210 million gallons a year that Nestle has sought to pump from the watershed of a small stream in Mecosta County.

²"Canada Eyes a Pipeline of Sorts to Arid America," *Detroit Free Press*, May 19, 1985.

³U.S. *Water News*, "It's time to consider developing the Great Lakes Water Farm," April, 1999.

⁴*American Bar Association Journal*, "Water Wars Predicted in a Thirsty Nation," 68 A.B.A.J. 1066, September 1982.

⁵Office of the Governor, *Addresses and Special Messages of Governor William G. Milliken, 1969-1982: Remarks at Great Lakes Water Resources Conference*, 137 (1982).

⁶*Washington Post*, "Great Lakes Compact Aims to Protect Water; States, Canada Fear Thirsty Sun Belt," February 11, 1985.

⁷International Great Lakes Diversions and Consumptive Uses Study Board. *Great Lakes Diversions and Consumptive Uses*. Burlington, Ontario and Chicago, Illinois, September 1981, 258 pp.

⁸*Detroit Free Press*, "Superior is Ours, Legislator Protests," May 1, 1998.

⁹James S. Lochhead, Chad G. Asarch, Milos Birutcsiki, Patrick J. Monahan, Gray E. Taylor, Pieter M. (Pete) Schenckan, *Report to the Council of Great Lakes Governors: Governing the Withdrawal of Water from the Great Lakes*, May 18, 1999.

¹⁰Ralph Pentland, "Ban Diversion of Lakes Water," *Traverse City Record-Eagle*, September 25, 2004, <http://www.record-eagle.com/2004/sep/25fpent.htm>.

¹¹Donald Tate and Geoff Harris, GeoEconomics Associates, for the International Joint Commission, *Water Demands in the United States Section of the Great Lakes Basin, 1985-2020*, 50 (March 2000).

¹²International Joint Commission, *Protection of the Waters of the Great Lakes: Final Report to the Governments of Canada and the United States*, February 22, 2000 (Washington, Ottawa: 2000).

¹³Quoted in Michigan Land

Use Institute, "State Senate Again Considers Groundwater Protection," March 12, 2003. <http://www.mlui.org/landwater/fullarticle.asp?fileid=16453>.

¹⁴International Joint Commission, *Protection of the Waters of the Great Lakes: Final Report to the Governments of Canada and the United States*, February 22, 2000 (2000).

¹⁵Some climate models suggest that climate change could lower the levels of Lakes Huron and Michigan by three to five feet by the end of the 21st Century.

¹⁶"Bottler Offers Sports Fields for City Water," *Detroit News*, March 10, 2005, <http://www.detnews.com/2005/metro/0503/11/C08-113038.htm>.

¹⁷Executive Office of the Governor of Michigan, news release, "Granholm Issues Executive Directive Placing Moratorium on Bottled Water," May 27, 2005, <http://michigan.gov/gov/0,1607,7-168-23442-119000--,00.html>.

¹⁸*Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892).

¹⁹R. Sohm, J. Ledlie trans., *The Institutes: A Textbook of the History and System of Roman Private Law* (1970).

²⁰David C. Slade, editor, *Putting the Public Trust Doctrine to Work: The Application of the Public Trust Doctrine to the Management of the Lands, Waters and Living Resources of the Coastal States*, 17 (1990).

²¹*The Genessee Chief v. Fitzhugh*, 53 U.S. 443, 454 (1851).

²²*Barney v. Keokuk*, 94. U.S. 324 (1876).

²³In fact, a Livingston County entrepreneur did just that in 2002, "selling" rights to water under his land for \$2.8 million to a regional water authority. Mike Murphy, "Water Authority Wants Privately Owned Well," *Detroit News*, February 21, 2002, <http://www.detnews.com/2002/livingston/0202/21/d051-422766.htm>.

²⁴The Nestle lawsuit announced June 17 seeks to strike down the section of the Water Resources Development Act that requires all eight Great Lakes state governors to approve new or increased

diversions.

²⁵Such an act would accomplish the following:

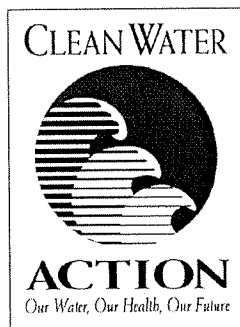
1. Define the private capture or acquisition and sale of public trust water resources, including groundwaters and surface waters (whether in bottles, pipelines, tankers or other conveyances) for consumption outside the Great Lakes Basin as an "export," as that term is defined in Section 1109 of the federal Water Resources Development Act and as a "diversion" under section 32703, Great Lakes Preservation, PA 451, 1994. *This would mean all such projects are subject to the regional review process and approval by all eight Great Lakes governors.*

2. Define the private capture or acquisition and sale of public trust water resources for consumption within the state as a non-traditional use not protected by the riparian doctrine and subject to strict regulation or prohibition by an act of the Legislature. *This would require an affirmative act of the Legislature even for in-state private capture or acquisition and sale for consumption.*

3. Define agricultural, manufacturing, utility cooling, domestic and other uses traditionally protected by the riparian doctrine as not constituting a capture and private sale or acquisition for export. *This would mean all such projects are not subject to the regional review process and approval by all eight Great Lakes governors.*

The legislation would prohibit the above-defined "capture or acquisition and private sale," and "exports," unless expressly authorized by separate legislative act, and subject to a two-part test: (a) that a public purpose is served, and (b) no material diminishment of flow, level, or harm is done to the waters and public trust or related purposes.

For all uses defined under (3) above, the legislation would express the intent of the Legislature to promote such reasonable uses consistent with existing laws and regulations and subject to appropriate future water use permitting legislation.



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Clean Water Action and Clean Action Fund acknowledge the leadership of Michigan Citizens for Water Conservation in standing up for Michigan's precious groundwater, lakes and streams and for calling statewide attention to the need for a state policy protecting public trust water resources.